

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION V**

DATE: February 14, 1994

SUBJECT: Comments on Mary Gade's Jan. 28, 1994 Letter RE: Amendment
no.3 to the NL/Taracorp SSC

FROM: John Oaks

TO: Brad Bradley,
cc: B. Kush, K. Yeates

Regarding the January 28, 1994 letter from Mary Gade, Illinois Environmental Protection Agency (IEPA) to Valdas Adamkus, U.S. EPA, concerning the proposed third amendment to the Superfund State Contract (SSC) {IEPA refers to it as an "Intergovernmental Agreement"} that exists between U.S. EPA and IEPA for the extended remedial action being carried out at the NL/Taracorp site in Granite City, Illinois, it is my understanding that IEPA signed the Record of Decision (ROD) for this action on **March 30, 1990**, knowing that ultimately, the cost of this project could, and probably would rise to in excess of \$28,000,000. That would require IEPA to provide a minimum of \$2,800,000 as its 10% share as required by CERCLA.

At the time of the signing of the ROD, IEPA was contemplating petitioning U.S.EPA for a deviation from 40 CFR Parts 30 and 35, in hopes of receiving credits in excess of **2.2 million dollars** for expenditures that IEPA made in connection with a water supply remedial action that IEPA conducted at the Byron Salvage Yard site. U.S. EPA, Region 5 knew of IEPA's contemplation of this petition. However, Region 5, informed IEPA that while we would support IEPA's efforts in this matter, Region 5 could not guarantee or assure that U.S. EPA Headquarters would approve IEPA's credit request. Therefore at very least, when IEPA signed the NL/Taracorp ROD, IEPA should have done so expecting to be responsible for the total 10% cost share.

On **January 31, 1991**, nearly one year after IEPA's signing of the NL/Taracorp ROD, IEPA submitted phase I of its petition to Region 5, and Region 5 forwarded it to U.S. EPA Headquarters with a recommendation that IEPA be allowed to take credit for its remedial action costs at the Byron Salvage Yard Site.

In a letter dated **September 11, 1992**, the Grants Administration Division in U.S. EPA Headquarters approved of credit in the amount of \$2,200,522.15, which IEPA could apply as its cost share at the Byron Salvage Yard site and other sites of IEPA's choosing. IEPA elected to apply some of its credit to the 10% cost share required for the NL/Taracorp site.



At the FY'93 Mid-Year Superfund Program Review meeting, IEPA requested from Region 5, a schedule of future funding increments for the NL/Taracorp site. On **June 22, 1993**, Region 5 sent a letter to IEPA indicating what further actions Region 5 anticipated, approximately when they would commence, and what the costs were expected to be. IEPA was to have used that information as the basis for its request to the State Legislature to fund the State's 10% cost share.

On **August 20, 1993**, IEPA submitted a second phase of its petition for credit for work it performed at the Byron Salvage Yard site. This second phase was discussed by both Agencies at the FY'93 Year-End Superfund Program Review meeting on October 14, 1993. At that meeting, U.S. EPA requested, and IEPA agreed to provide additional information to support this second phase of the credit petition. Region 5 has not yet received the additional information and, Region 5 gave no indication of its stance regarding support of IEPA's petition during that discussion. Moreover, Region 5 had in 1990, told IEPA that credit for the work which would be described in the second phase of IEPA's petition would be difficult for Region 5 to justify.

IEPA's approval of the third amendment to the NL/Taracorp SSC should not be driven by whether or not U.S. EPA approves IEPA's credit petition, but by IEPA's tacit knowledge of the remedial action cost by concurring on the ROD, and their commitment in the original SSC to participate in this remedial action.

While Region 5 cannot "force" IEPA to sign the amendment to the already existing SSC, IEPA needs to be aware of the ramifications of this action.

1. Adverse reaction by the community - this is a highly visible site.
2. The existing 2.2 million credit granted by U.S.EPA has not officially been requested for or applied to any other site. Therefore, IEPA cannot say it does not have the match available. Also, Region 5 would take a dim view of agreeing to the credit usage elsewhere if the State refuses to use it at the most urgent need, resulting in site work stoppage.
3. Region 5 would have no choice but to view this as a non-performance issue by IEPA which would impact IEPA's ability to be designated lead for any new Fund financed Remedial or SACM related activities.
4. IEPA's documented inability to pay does not put the State in the best position to demonstrate financial capability to undertake a possible authorization of Superfund.

Other issues to consider include:

1. If IEPA's refusal to cost share is allowed at NL Industries, this could result in the cessation of all federal fund lead remedial actions in the State of Illinois,
2. As a logical follow-up, if PRPs find out about this situation, they will have no incentive to enter into any settlement agreements for federal lead remedial actions in Illinois, and
3. There may also be ramifications for future Region 5 funding levels if the \$10,000,000 already committed to the NL Site is not used in FY 1994.